

2025

Hfx No. 545976

Supreme Court of Nova Scotia

Between:

**CANADIAN CONSTITUTION FOUNDATION**

Applicant

and

**MINISTER OF THE DEPARTMENT OF NATURAL RESOURCES**  
representing His Majesty the King in right of the Province of Nova Scotia

Respondent

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2025

Hfx No. 546181

Supreme Court of Nova Scotia

Between:

**JEFFREY EVELY**

Applicant

and

**NOVA SCOTIA MINISTER OF NATURAL RESOURCES and THE ATTORNEY  
GENERAL OF NOVA SCOTIA REPRESENTING HIS MAJESTY THE KING IN RIGHT  
OF THE PROVINCE OF NOVA SCOTIA**

Respondents

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**PRE-HEARING BRIEF OF THE APPLICANT,  
CANADIAN CONSTITUTION FOUNDATION**

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## I. OVERVIEW

1. The CCF challenges a Proclamation issued by the Minister of the Department of Natural Resources which had the effect of banning all persons in Nova Scotia from “entry” into any land classified as “woods” under the Forests Act, for a three-month period from August 5, 2025, to October 15, 2025. The stated objective of the Proclamation was to mitigate or prevent risk of wildfires.
2. The Proclamation engaged the s. 7 Charter right to liberty, because it carried a potential penalty of imprisonment associated with any violation.
3. The Proclamation was so vague as to deprive the public of the ability to know the bounds of prohibited conduct (what constituted “entry” into the “woods”), and lead to no control over discretion in its application. After the Premier expressed to the public his intention for “serious” and “zero tolerance” enforcement of the Proclamation, department staff made up their own rules for issuing permits and identifying breaches of the travel ban.
4. The Minister never considered or articulated the risk that was posed to the woods, and which was said to be addressed by the Proclamation. Assuming (without conceding) that some such risk existed, the Proclamation was also overbroad in its scope, capturing wide ranging conduct which had no rational connection to the objects of the Minister’s power under s. 25(1) of the Forests Act. The Proclamation’s overbreadth made it an unconstitutional limit of s. 7 *Charter* rights, threatening liberty in a manner contrary to the principles of fundamental justice.

5. The Minister's power under s. 25(1) of the Forests Act was never intended to permit him to prevent any person from entering any land in Nova Scotia that met the statutory definition of "woods", as the Proclamation did. Instead, the legislation empowered him to create a "restricted travel zone" in any "area of the woods" where it was necessary for the protection of that area. In declaring the Proclamation, the Minister also acted *ultra vires* his powers.
6. Finally, the Minister engaged in absolutely no consideration of the impact of the Proclamation on the *Charter* rights of Nova Scotians, or the values which underly those rights. In failing to do so, he exercised his power unreasonably.
7. The CCF seeks a declaration that the Proclamation was an unreasonable exercise of the Minister's power under s. 25(1) of the Forests Act, on the basis that it was (a) unconstitutional; (b) *ultra vires* his powers, and (c) declared without necessary proportionate balancing of *Charter* rights and values. Any one of these defects is sufficient to invalidate the Proclamation, and prevent a similar exercise of the Minister's power in the future.

## II. FACTS

### A. The Fire Proclamation – Travel Ban

8. On August 5, 2025, the Minister of the Department National Resources (“DNR”) issued a Fire Proclamation – Travel Ban, prohibiting all travel to the “woods” in the Province of Nova Scotia (the “Proclamation”), pursuant to s. 25(1) of the *Forests Act*, R.S.N.S. 1989, c. 179 (the “*Forests Act*”).
9. The section of the *Forests Act* relied on by the Minister in issuing the Proclamation provides in full:

#### **Restricted travel zone**

- 25** (1) Whenever deemed necessary for the protection of the woods, the Minister may at any time by proclamation set aside for any period of time a restricted travel zone in any area of woods upon which no person shall enter for the purpose of travelling, camping, fishing or picknicking, or any other purpose, without a travel permit.
- (2) A travel permit may be issued by the Minister, a conservation officer or other person authorized by the Minister.
- (3) Subsections (1) and (2) do not apply to the owner or occupier of woods or the servants, agents or assigns thereof, conservation officers, surveyors and any other person designated from time to time by order of the Minister.
- (4) A forest travel permit may be cancelled or suspended at any time by the Minister, a conservation officer or other person authorized by the Minister.

10. The Proclamation did not identify a particular “zone in any area of woods”, and instead issued the following prohibition:

**NOW KNOW** that the Minister of Natural Resources, pursuant to Section 25(1) of the *Forests Act*, does hereby prohibit entry into the woods for the

purpose of travelling, camping, fishing or picnicking, or any other purpose, without a valid travel permit in all counties in Nova Scotia.

11. The Proclamation was in force from 4:00 pm on August 5, 2025, until its expiry at 2:00 pm on October 15, 2025, and applied to all persons in Nova Scotia.
12. No fine amount or prescribed penalty contravention is included in the Proclamation itself. The Proclamation provides only that:

**ANY PERSON** who contravenes this Proclamation may be liable to prosecution by virtue of the provisions of the *Forests Act*.

13. Section 36(1)(b) of the *Forests Act* provides that a violation of the Proclamation by an individual is punishable on summary conviction by a fine of no more than \$500,000 or a period of imprisonment of no more than six months.
14. The *Summary Proceedings Act*<sup>1</sup> applies to offences under the *Forests Act*, which is enumerated legislation under Schedule B. That Act grants search and seizure powers to further the enforcement of the *Forests Act*, and provides that the summary conviction provisions of the *Criminal Code* apply to a violation of the Proclamation.<sup>2</sup>
15. According to Schedule 12 to the *Summary Offence Tickets Regulations*,<sup>3</sup> the “Out of Court Settlement” amount for a ticket issued pursuant to s. 25(1) of the *Forests Act* for “entering woods without forest travel permit when travel proclamation is in effect” is \$28,872.50.

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<sup>1</sup> RS, c 450, s. 1. (Book of Authorities (“BOA”), Tab 18)

<sup>2</sup> SPA, s. 7.

<sup>3</sup> NS Reg 281/2011

16. In its press release following the Proclamation, the Premier's Office and DNR informed the public that "the fine for penalty for violating the restrictions is \$25,000".<sup>4</sup>

**B. Materials considered by the Minister before declaring the Proclamation**

17. The Minister produced a record representing the materials considered by him in making the decision to issue the Proclamation. An explanation of the materials contained in the record is included in the Affidavit of James Rudderham, filed without objection from the other parties.
18. On July 31, 2025, departmental staff provided the Minister with a memorandum requesting a decision regarding the Proclamation (the "Decision Request").<sup>5</sup> The Minister also received a presentation of updated fire data on August 5, 2025, (the "Woods Travel Restrictions Briefing").<sup>6</sup>
19. In addition to the materials prepared for his consideration with respect to the decision to issue the Proclamation in particular, the record also contains various regular reports regarding the status of wildfires and fire risk in the province, of which the Minister was aware at the time that he made the decision under review.<sup>7</sup> There is no indication of how these materials influenced or informed the decision to issue the Proclamation. None of them address the risk of human activity in the woods.

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<sup>4</sup> Record of the Respondent, Amended January 12, 2026, ("Amended Record"), Tab 8 and 9.

<sup>5</sup> Amended Record, Tab 1.

<sup>6</sup> Amended Record, Tab 6.

<sup>7</sup> Amended Record, Tabs 3, 4 and 5

20. The Decision Request outlined the context of “extreme fire weather conditions across the province” and the history of prior exercise of Ministerial power under s. 25(1) of the *Forests Act* in 2016 and 2023 to impose restrictions on travel in the woods, which were said to have been effective at mitigating fire risk. No data or technical information about fire risk was contained in the Decision Request.
21. The Decision Request outlined two options: (1) restrict travel in all woods in Nova Scotia and issue permits “allowing limited access to Crown lands for essential industries and services under specific fire risk mitigation conditions” or (2) restrict travel “in any area of the woods for any purpose” and “indicate that permits will not be issued at this time”.
22. The Decision Request outlined certain “Pros” and “Cons” to each of the two options presented to the Minister, as well as “Risks and Mitigations”. For ease of reference, these have been reproduced in the table, below:

	<b>Option 1: Proclaim Travel Ban and issue permits</b>	<b>Option 2: Proclaim Travel Ban and don't issue permits</b>
<b>Pros</b>	<ul style="list-style-type: none"> <li>- Supports continuity of essential services and economic activities</li> <li>- Builds on an established and operationally proven approach</li> <li>- Strick [sic] controlled access to the woods corresponds to fire risk, where when conditions are extreme it takes very little to start a large fire</li> </ul>	<ul style="list-style-type: none"> <li>- Maximizes fire risk reduction</li> </ul>

<b>Cons</b>	<ul style="list-style-type: none"> <li>- Put pressure on local offices to issue permits and respond to inquiries</li> <li>- Some business [sic] that use the woods will be impacted</li> </ul>	<ul style="list-style-type: none"> <li>- Halts essential work and could impact critical services (e.g. power infrastructure)</li> </ul>
<b>Risk</b>	<ul style="list-style-type: none"> <li>- The public may perceive the proclamation and restrictions to travel in the woods to be too extreme.</li> </ul>	<ul style="list-style-type: none"> <li>- May be challenged by stakeholders relying on Crown lands access for livelihood, especially the forest sector</li> </ul>
<b>Mitigation</b>	<ul style="list-style-type: none"> <li>- Clear and transparent communication will be used to explain the rationale behind the approach and outline process to obtain a travel permit.</li> </ul>	<ul style="list-style-type: none"> <li>- Clear and transparent communication will be used to explain the rationale behind the approach</li> </ul>

23. The considerations in the Decision Request focussed on essential services and economic activity. The Decision Request did not consider the impact of the Travel Ban on the rights or freedoms of any Nova Scotian. It also did not refer to any specific indicators of fire risk in any particular area of the province, except to conclude that there were “extreme fire weather conditions across the province”.
24. The Decision Request did not ask the Minister to consider the option of not exercising his power under s. 25(1) of the *Forests Act* to issue a travel ban, including issuing an advisory regarding travel in the woods. In other words, the Decision Request did not address the question of whether exercise of the Minister’s power under s. 25(1) of the *Forests Act* was justified in the circumstances, or not.
25. No options short of a province-wide travel ban were considered.
26. The Decision Request recommended that the Minister proceed with Option 1. It was signed by departmental staff including the Acting Deputy Minister, on July 31, 2025.

27. The record of decision indicates that the DNR was planning public communications announcing the Proclamation as early as August 1, 2025, but they elected to wait until after the long weekend.<sup>8</sup> According to the evidence of Mr. Rudderham, the DNR were already expecting the Proclamation to be issued on August 1, 2025, but that “it was considered that it would be better if the publication occurred when the Department would have a full staff on hand during a normal work day”, after the Natal Day long weekend was over.<sup>9</sup>
28. The August 5, 2025, Woods Travel Restrictions Briefing is a slide presentation containing a summary of wildfire activity since the Minister imposed a ban on open fires on July 30, 2025.<sup>10</sup> It contains current information by region regarding forecasted temperature, humidity and precipitation and the “Build Up Index” or BUI and “Drought Code” by county. This presentation is dated the same day as the Proclamation (August 5, 2025) and post-dates the Decision Request. On its face, the presentation appears to be a weather forecast and fire condition update to the Minister, only. No discussion of the travel ban is contained in the presentation materials.
29. According to the affidavit evidence filed on this application by the Minister, the August 5, 2025, Woods Travel Restrictions Briefing showed that only some areas of the province had a “extreme” fire risk with other areas having “very high” or “high” risk based on the expected intensity of forest fires as indicated by Build Up Index

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<sup>8</sup> Amended Record, Tab 7.

<sup>9</sup> Rudderham affidavit, para 22.

<sup>10</sup> Amended Record, Tab 6

and Drought Code.<sup>11</sup> The record of decision does not reveal any consideration of whether a province-wide travel ban was necessary to mitigate the fire risk.

### **C. Materials considered by departmental staff in making the Decision Request**

30. In addition to the materials that were considered by the Minister in making his decision to issue the Proclamation on August 5, 2025, the Minister has filed affidavit evidence from Mr. Rudderham setting out “background information” considered by departmental staff in making the Decision Request to the Minister.
31. First, the Minister has provided a “general framework or protocol that the staff of the Department use when presenting data and developing recommendations that ultimately are put before the Minister”.<sup>12</sup> This protocol contemplates three escalating levels of exercise of Ministerial power in response to escalating fire risk, and identified prerequisite conditions before each intervention is deemed appropriate: (a) open fire ban; (b) woods travel advisory; and (c) woods travel ban. This protocol was not before the Minister at the time that he made his decision, and is not referred to in the Decision Request.
32. The Minister’s own evidence of fire risk does not match the protocol’s requirements to issue a woods travel ban. There is no evidence in the record of decision that the Minister or any departmental staff in DNR considered their own protocol before

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<sup>11</sup> Rudderham affidavit, para 17-20 Record Tab 6, p 6.

<sup>12</sup> Rudderham Affidavit, para 24, Exhibit A.

determining that a province-wide travel ban to the woods for all persons for any purpose was appropriate.

**D. Information provided by the DNR to the public re the Proclamation**

33. The Decision Request contemplated the DNR developing a plan for “clear and transparent” communication to the public about the Proclamation as risk mitigation for the potential negative response from the public.
34. The evidence before the Court includes press releases developed by the DNR in anticipation of the Minister’s approval of the Decision Request and issuance of the Proclamation,<sup>13</sup> as well as transcripts and recordings of press conferences given by the Minister and Premier.<sup>14</sup>
35. At no point did the Minister or Premier identify what human activity causing fire risk was being targeted by the Proclamation in their communications to the public.
36. During the August 5, 2026, press conference, the Premier expressed that the province was “serious...on the enforcement of the restrictions” and there would be “zero tolerance” for violations of the Proclamation.<sup>15</sup>

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<sup>13</sup> Amended Record, Tabs 8 and 9

<sup>14</sup> Affidavit of Peter MacIsaac, sworn February 13, 2026, (“MacIsaac Affidavit”), Exhibit H.

<sup>15</sup> MacIsaac affidavit, Exhibit H, p 7, lines 3-20.

### III. ISSUES

37. The CCF raises the following issues in this application for judicial review:
- a. Does the Proclamation impose a restriction on life, liberty or security of the person, in a manner inconsistent with the principles of fundamental justice, and therefore infringe s. 7 of the *Charter*?
  - b. Is the Proclamation *ultra vires* the power of the Minister under s. 25(1) of the Forests Act?
  - c. Was the Proclamation issued without proper regard for *Charter* rights and values, rendering it unreasonable?

#### IV. LAW AND ARGUMENT

38. The CCF seeks to have the Proclamation declared unreasonable on three grounds.

##### A. The Proclamation is unconstitutionally vague and overbroad

39. Violation of the Proclamation results in the potential for imprisonment under s. 36(1)(b) of the *Forests Act* and constitutes a summary conviction offence under the *Criminal Code*. The Proclamation therefore engages the s. 7 *Charter* right not to be deprived of liberty except in accordance with the principles of fundamental justice.<sup>16</sup>

40. The CCF submits that the Proclamation violates s. 7 of the *Charter* because it constitutes an impermissibly vague and overbroad law.

41. Any exercise of the Minister's power which is found to violate the *Charter* will be unreasonable.<sup>17</sup>

##### i) The Proclamation is void for vagueness

42. It is often colloquially said that "ignorance of the law is no excuse", which can have heavy consequences for someone who finds themselves offside the law. However, where the s. 7 right to liberty is engaged, the *Charter* requires that the law be sufficiently clear that members of the public are able to know whether their conduct puts them in legal jeopardy.

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<sup>16</sup> R v. Valliancourt, [1987] 2 SCR 636 at para 26 (BOA, Tab 13); R v Moriarity, 2015 SCC 55, ("Moriarity") at para 24 (BOA, Tab 10)

<sup>17</sup> *Commission scolaire francophone des Territoires du Nord-Ouest v Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 ("Commission scolaire") at para 64-66 (BOA, Tab 4)

43. A vague law is contrary to the principles of fundamental justice because (a) it fails to provide fair notice to citizens of the zone of risk which applies to prohibited conduct; and (b) it offers no control over discretion, which can lead to arbitrary enforcement. Certainty in the criminal law is necessary so that prohibited conduct is fixed and knowable in advance.<sup>18</sup>
44. In order to determine whether an impugned provision is unconstitutionally vague, the Court must ask whether there is an adequate basis for reaching a conclusion as to its meaning by reasoned analysis, applying legal criteria. Where judicial interpretation cannot give sensible meaning to its terms and provide a meaningful standard of conduct, the vagueness of the law will be “constitutionally terminal”.<sup>19</sup>
45. The CCF submits that the Proclamation fails to provide adequate notice to the public to delineate a “zone of risk” which makes offences under s. 25(1) of the *Forests Act* fixed and knowable in advance. It leaves an impermissible discretion to enforcement officers both in enforcing the Proclamation and in issuing travel permits, to the point of unconstitutional vagueness. This is apparent on the plain language of the Proclamation and *Forests Act*, further evidenced by the DNR’s own enforcement responses to the Proclamation.

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<sup>18</sup> *R. v Nova Scotia Pharmaceutical Society*, [1992] 2 SCR 606 (BOA, Tab 12); *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, 2004 SCC 4, at para 16 (BOA, Tab 3); *R v. Levkovic*, 2013 SCC 25 at para 33 (BOA, Tab 10).

<sup>19</sup> *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2017 BCCA 324 at para 69, leave to appeal to SCC denied (BOA, Tab 15).

a) *The Proclamation makes it impossible to clearly identify the “woods” or “entry into the woods”*

46. The *Forests Act* defines “woods” to mean “forest land and rock barren, brush land, dry marsh, bog or muskeg”. The *Forests Act* does not define “rock barren, brush land, dry marsh, bog or muskeg”. The legislation defines “forest land” to include “land bearing forest growth or land from which the forest has been removed but which shows surface evidence of past forest occupancy and is not now in other use”. Finally, “forest” is defined by the *Forests Act* to mean “a plant association consisting predominantly of trees”. There is no indication of how many associated trees are necessary to make “forest”, or over what area, such that a group of trees constitutes “woods”.
47. No other guidance is available in the *Forests Act* to define what land is considered “woods” and what is not. It does not identify whether the type of land use, density of “forest growth” or any distance from other features like roads, beaches or dwellings can impact whether a particular area is designated as “woods” for the purpose of the legislation. The Proclamation also does not distinguish between Crown, municipal, or private land in barring “entry into the woods”.
48. The Proclamation does not identify whether there is a minimum area or density or number of trees to be considered woods. Where there is a grouping of trees at the edge of a lawn, for example, it is not clear whether the area directly around the trees is considered to be “woods”, or whether there is a distance that one must maintain from trees in order to not “enter” them.

49. The Proclamation does not give notice to the public whether roads that are bounded on either side by woods are themselves considered to be “woods” and if so, on what basis.

(b) *The Proclamation did not provide adequate control of discretion in enforcement*

50. The Minister’s own evidence of enforcement guidelines and efforts demonstrate that the Proclamation was overly vague so as to give rise to confusion, contradiction and arbitrariness in enforcement.

51. DNR prepared internal an instructional “Q&As” guide and provided it to DNR staff for the purpose of implementing and enforcing the proclamation.<sup>20</sup> Some of the same information contained in the Q&A was repeated in press conference by the Premier and Minister on August 5, 2026, but the guide itself was not available to the public.

52. The best example of the challenge of enforcing the Proclamation is found in the “Q&As” which provides the following script for advice to the public:<sup>21</sup>

- a. “We are asking all Nova Scotians to cooperate and be sensible in applying these rules to help keep our communities safe. Don’t look for loopholes. If you’re not sure, just don’t do it – that is the safest approach”.
- b. “It’s fine to use a relatively short trail to reach the beach – like from the parking area to the beach. Use your best judgement [sic]”.

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<sup>20</sup> Affidavit of Alison Tracy, sworn February 20, 2026, (“Tracy Affidavit”), Exhibit B.

<sup>21</sup> Tracy Affidavit, Exhibit B.

- c. “If you need to use a relatively short trail through a wooded area to get from point A to point B, that is generally ok. Use your best judgement [sic]”.
- d. “Sportfishing is allowed as long as you don’t travel any great distance through the woods to do it”.
- e. “You can go boating as long as you are not going any great distance through the woods to reach the boat launch. Use your best judgement [sic]”.

[emphasis added]

- 53. The DNR internal “Q&As” document indicates that officials exercised their discretion to allow camping in “actual campgrounds – such as campground businesses and provincial parks” whether or not they were located in the “woods”.<sup>22</sup> This advice was also contained in the government press release issued at the time of the Proclamation.<sup>23</sup>
- 54. The informal and vague nature of DNR’s advice to the public to “use their best judgement [sic]” cannot be constitutionally squared with the reality that a violation of the Proclamation by an individual is punishable on summary conviction by a fine of no more than \$500,000 or a period of imprisonment of no more than six months.
- 55. The Proclamation’s vagueness also led to significant inconsistency between the information contained in the “Q&As” and the enforcement efforts. The Q&As instructed DNR staff to advise members of the public that they “can cross Crown

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<sup>22</sup> Tracy Affidavit, Exhibit B

<sup>23</sup> Amended Record, Tab 8 and 9.

land to get to your private property if you need to” and to “use your best judgement [sic]” but that “you cannot cross wooded Crown land for recreational purposes” like fishing.<sup>24</sup> However, the Premier indicated at the press conference that the public was allowed to Crown land on “relatively short” trails to go fishing or visit a beach.<sup>25</sup>

56. As a further example, it appears that DNR interpreted a prohibition on “entry” into the “woods” to include traveling on a road which is bounded by woods, without entering them. The Minister’s evidence indicates that DNR exercised its authority enforce the Proclamation against citizens traveling over public roads which traversed Crown land, even though there was no notice that this was a prohibited activity.
57. Overall, both the text of the Proclamation and related legislation and the evidence available about discretionary enforcement indicates that the Proclamation did not offer an ascertainable zone of prohibited activity (allowing the public to know what constituted “entry” into the “woods”), and left enforcement to the unrestrained discretion of the DNR. This made it unconstitutionally vague, contrary to the principles of fundamental justice.
58. An unconstitutionally vague law cannot be saved by s. 1, because it cannot pass the “prescribed by law” or minimal impairment requirements of the *Oakes* test.<sup>26</sup>

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<sup>24</sup> Tracy Affidavit, Exhibit B

<sup>25</sup> MacIsaac Affidavit, Exhibit H.

<sup>26</sup> *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, at para 193 (dissenting reasons of Arbour J.) (BOA, Tab 3).

ii) The Proclamation is unconstitutionally overbroad

59. A law can offend the principles of fundamental justice when its operating means are broader than necessary to achieve the state's objective. In such a case, the overly broad scope of the law means that it captures some conduct that bears no relation to its purpose. Such a law might be rational in some cases, but in other cases there is no connection between the effect and purpose of the law.<sup>27</sup>
60. The CCF does not concede that the Proclamation was necessary at all for the protection of the woods in order to mitigate fire risk beyond the existing fire protection restrictions in the *Forests Act* and *Fire Regulations*. It remains to be established by the Minister what risk was believed to be mitigated by the Proclamation, that was not otherwise mitigated by the open fire ban or s. 27 of the *Act*. The CCF supports Mr. Evely's position that the Proclamation is arbitrary.
61. However, in the alternative, assuming that the Minister can establish that the Proclamation was necessary for the protection of the woods to prevent or mitigate wildfires in some circumstances, the CCF submits that the Proclamation was overbroad.
62. The question for the Court in the overbreadth analysis is whether some of the conduct captured by the Proclamation (and for which a travel permit was not available) does not need to be banned for the mitigation of wildfire risk. In other

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<sup>27</sup> *Canada (Attorney General) v. Bedford*, 2013 SCC 72 ("*Bedford*"), at para 112-117 (BOA, Tab 2)

words, there is no rational connection between at least some of the conduct which has been banned and the mitigation of fire risk contemplated under the *Forests Act*.

63. In order for the Court to assess state action for overbreadth, it must first determine the object of the impugned law and then identify “whether the law deprives individuals of life, liberty or security of the person in cases that do not further that object.”<sup>28</sup> This is done by comparing the legitimate object of the law with its actual scope, to determine whether “the reach of the law exceeds its object”.<sup>29</sup>
64. In determining overbreadth, the Court may consider reasonable hypotheticals to determine whether the law goes too far and interferes with some conduct that bears no connection to its objective.<sup>30</sup>
65. No overbreadth is permissible. The CCF need only establish that the Proclamation was overbroad with respect to one actual or hypothetical case to establish a breach of s. 7 of the *Charter*.<sup>31</sup>

(a) *The object of a Restricted Travel Zone Proclamation*

66. The *Forests Act* includes, at s. 2, a statement of the purpose of the legislation. This is the “most direct and authoritative evidence of the legislative purpose of a provision”.<sup>32</sup> This section includes the following relevant expressions of the legislature’s intent:

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<sup>28</sup> *R v. Appulonappa*, 2015 SCC 59 (“*Appulonappa*”) at para 27 (BOA, Tab 8).

<sup>29</sup> *Ibid.* para 31.

<sup>30</sup> *Appulonappa* at para 26-28, (BOA, Tab 8); *Moriarity* at para 24 (BOA, Tab 11).

<sup>31</sup> *Bedford*, at para 113, 123 (BOA, Tab 2).

<sup>32</sup> *Appulonappa* at para 49, citing Sullivan, pp 274-276 (BOA, Tab 8).

## Purpose

2 The intent and purpose of this Act is directed towards

- (a) developing a healthier, more productive forest capable of yielding increased volumes of high quality products;
- (b) encouraging the development and management of private forest land as the primary source of forest products for industry in the Province;
- (c) supporting private landowners to make the most productive use of their forest land;
- (d) providing effective management of all Crown lands;
- (e) maintaining or enhancing wildlife and wildlife habitats, water quality, recreational opportunities and associated resources of the forest;
- (f) enhancing the viability of forest-based manufacturing and processing industries;
- (g) doubling of forest production by the year 2025;
- (h) creating more jobs immediately and in the longer term through improved productivity; and
- (i) preventing and mitigating wildfires in a changing climate.

67. A significant portion of this legislative scheme is specifically designed for the prevention and mitigation of fires. The *Forests Act* and the *Forest Fire Protection Regulations*,<sup>33</sup> designate a fire season – between March 15 and October 15 of each year – during which time domestic and industrial burning activity is regulated on a daily basis by the DNR.<sup>34</sup>

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<sup>33</sup> NS Reg 135/2019 made pursuant to s. 40 of the *Forests Act* (“*Forest Fire Regulations*”), (BOA, Tab 17).

<sup>34</sup> See *Forest Fire Regulations*, s. 5-10, (BOA, Tab 17).

68. The *Forests Act* also gives the Minister the power to ban “open fires” at any time “in any part or parts of the Province during the period specified” by proclamation, under s. 24. In the present case, the Minister had issued an open fire ban by proclamation on July 31, 2025.<sup>35</sup>
69. Separately, s. 26(1)(c) of the *Forests Act* permits a conservation officer or other person appointed by the Minister to “restrict persons or vehicles from entering any area except a highway as defined by the *Motor Vehicle Act*” for the purpose of “controlling and extinguishing an open fire in the woods”.<sup>36</sup>
70. Finally, s. 27 of the *Act* contains a litany of limitations and requirements aimed at “fire prevention”, contravention of which is an offence under the *Act*:

### **Fire prevention**

27 (1) No person during the fire season shall throw, drop or otherwise deposit any burning match, cigarette, cigar or smoking material, live coals, hot ashes or burning substance, or fail to extinguish any such thing unless those materials are deposited into a repository specifically designed to contain hot materials with no chance of fire spread.

(2) Where a person is permitted to ignite an open fire pursuant to this Act, that person shall take every reasonable effort to prevent the fire from spreading and shall not leave the fire unattended until it is completely extinguished.

(3) No person shall ignite or cause to be ignited an open fire on privately owned land without the permission of the owner or occupier.

(4) Every person in charge of a forestry operation, or any other activity, conducted in the woods or within one thousand feet of the woods shall

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<sup>35</sup> Amended Record, Tab 2.

<sup>36</sup> The *Motor Vehicle Act*, RS c. 23, defines a “highway” to include (i) a public highway, street, lane, road, alley, park, beach or place including the bridges thereon, and (ii) private property that is designed to be and is accessible to the general public for the operation of a motor vehicle.

provide and maintain at the place of the forestry operation such fire fighting equipment as is required by the regulations.

(5) No person shall operate in the woods or within one thousand feet of the woods any burner, engine, incinerator or other spark emitting outlet that is not provided with an adequate device for arresting sparks.

(6) No person shall refuel or leave unattended a power saw or like equipment in the woods or within one thousand feet of the woods unless the equipment has cooled to the point where it is unlikely to cause fire or has been put in a place where it is unlikely to start a fire.

(7) No person shall, in the woods, store or transport gasoline, fuel oil or a similar volatile flammable substance in a container other than one approved for the purpose by the Canadian Standards Association.

(8) During the fire season, any person in charge of a group entering the woods for any purpose shall ensure that that person and any persons under that person's charge are fully informed of the provisions of this Act and the regulations pertaining to forest fire protection.

71. By contrast, there is no reference in s. 25(1) of the *Act* to fire risk, in particular. Instead, the statutory precondition for issuing a proclamation of a “restricted travel zone” is that it is “deemed necessary for the protection of the woods”. There is no indication in the plain language of s. 25(1) that the legislature expressly contemplated restricting travel for the purpose of mitigating fire risk, as opposed to the risk of disease or insects – two other types of risks indicated as a protection concern in the Act.<sup>37</sup>
72. A statement of legislative purpose must be “precise and succinct”, and should be “firmly anchored in the legislative text, considered in its full context, and...avoid

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<sup>37</sup> See for example: s. 5(1)(d) and (e); s. 21(1);

statements of purpose that effectively predetermine the outcome of the overbreadth analysis without actually engaging in it”.<sup>38</sup>

73. The CCF submits that the object of s. 25(1) of the *Forests Act* is to prohibit entry into the woods that is necessary for the protection of the woods, including by preventing and mitigating wildfires.
74. However, this section should be read harmoniously with other sections of the *Act* aimed directly at fire prevention, in harmony with the entire legislative scheme. In other words, the Court should find that the proclamation of a restricted travel zone under s. 25(1) is intended to be used only when “deemed necessary” in addition to the usual burn restrictions and fire prevention restrictions contained in other sections of the *Act*. In order for a restricted travel zone to be “necessary for the protection of the woods”, the other fire prevention measures should be demonstrably ineffective. A restricted travel zone is also not properly issued to support active firefighting efforts, for which entry can instead be restricted by s. 26(1)(c).

(b) *The scope of the Proclamation*

75. The scope of the Proclamation at issue was wide-reaching. As a result of the Proclamation, all persons in Nova Scotia were prohibited from entering any area of “woods” which statutory definition appears to include any undeveloped land across the province other than waterways, and includes all types of land ownership (private,

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<sup>38</sup> *Moriarity*, at para 29-32 (BOA, Tab 11).

municipal, provincial, federal). The evidence of the DNR establishes they treated it as including roads on Crown land.

76. Under the Proclamation, the only way for an individual in Nova Scotia to enter any land deemed to be “woods” under the *Forests Act* was to apply for and obtain a “travel permit” at the discretion of the DNR. According to the evidence filed by the Minister, an applicant for a travel permit was required to provide the following information to the DNR:<sup>39</sup>

- a. Name and contact information;
- b. Why the activity in the woods could not be delayed or moved to a non-wooded area;
- c. General description of planned work; and
- d. Proposed mitigation plan to manage fire risks.

77. Accordingly, the Minister’s evidence suggests that persons will only be allowed to enter the woods for a pre-determined purpose, and if they can establish that their planned activity “could not be delayed or moved to a non-wooded area” and after establishing a “proposed mitigation plan to manage fire risks”. According to the Minister, approximately 300 travel permits were issued to individuals or businesses.<sup>40</sup>

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<sup>39</sup> Tracy Affidavit, para 9.

<sup>40</sup> Tracy Affidavit, para 12.

78. In determining whether the scope of the Proclamation was overbroad with reference to its objective, the Court can consider reasonable hypotheticals.<sup>41</sup> The CCF asks that that the Court consider the following reasonable hypothetical scenarios:

- a.** Scenario A: A professional dogwalker customarily hikes with group of six dogs off leash for one hour each day on a wooded trail on Crown land which she accesses by car on a public road, traveling the same path each day. She does not carry any metal, glass or fuel on her walk, and otherwise abides by the requirements of s. 27 of the *Act* and the burn ban.
- b.** Scenario B: A group of friends visit a cottage belonging to one of the group to celebrate a birthday. They travel together in one vehicle on private community roads which are bounded on either side by dense woods in order to get from the public highway (bordered by forested private property) to the cottage property. The cottage dwelling is located in a clearing, but there are woods that begin approximately three meters from one side of the dwelling, and other areas of the property which are clearly wooded. The clearing has grown up with brush and has not been sodded. They eat sandwiches and cake outside at a picnic table in the clearing in front of the cottage, do not enter the wooded areas on foot, and do not light a fire (not even a birthday candle) or use any outdoor appliances of any kind, and otherwise abide by the requirements of s. 27 of the *Act* and the burn ban.

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<sup>41</sup> *Appulonappa*, at para 28 (BOA, Tab 8)

- c.** Scenario C: A person drives on a marked public gravel road between two rural communities, where the road is lined by woods. They do not know who owns the woods, which are Crown land. They do not stop their car or exit the vehicle and enter the woods. There are no road closure signs. At all times their vehicle travels on hard gravel and remains at least three metres from the edge of the trees.
- d.** Scenario D: A family of two adults and a child hikes the Polly's Cove trail, walking on rock barren interspersed with brush and small trees overlooking the ocean. They do not carry any metal, glass or fuel on their walk, and otherwise abide by the requirements of s. 27 of the *Act* and the burn ban.
79. The CCF submits that each of the above scenarios include activity constituting an offence under the Proclamation, punishable by a fine or imprisonment, for which the DNR would not have issued a travel permit. There is no reasonable basis to conclude that it was “necessary for the protection of the woods” to prohibit any of these activities, or that banning these activities furthered the legislative object of mitigating or preventing wildfires.
80. In enacting s. 25(1) of the *Forests Act*, the Legislature did not intend to prevent activities which did not threaten the woods by creating a wildfire (or other) risk, and these hypotheticals illustrate how “the reach of the law exceeds its object”, rendering the Proclamation overboard and unconstitutional.<sup>42</sup>

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<sup>42</sup> *Appulonappa*, at para 31 (BOA, Tab 8).

81. The record of decision reveals that the Minister did not consider the option of not exercising his power under s. 25(1) of the *Forests Act* to issue a travel ban, including issuing an advisory regarding travel in the woods, as required by DNR's own internal protocol, or banning or advising against specific additional activities in particular locations that are rationally connected to the object of mitigating and preventing fires. It was overbroad for the Proclamation to ban every member of the public in Nova Scotia from entering any woods for any purpose, regardless of whether their activity created any fire risk, and regardless of the differing fire risks across the province.
82. In other words, the Minister did not consider the question of whether the Proclamation issued under s. 25(1) of the *Forests Act* was justified in all of the reasonable circumstances to which it could be expected to apply. The CCF submits that the Proclamation was therefore overbroad, and is unconstitutional.
83. If the Proclamation is overbroad, then it cannot be saved by s. 1. In particular, it must fail the minimal impairment branch of the s. 1 analysis.<sup>43</sup>

#### **B. The Proclamation was ultra vires the s. 25(1) power of the Minister**

84. The CCF submits that the Proclamation was *ultra vires* the Minister's powers under the *Act*.
85. A standard of reasonableness applies to judicial review on a question of *vires* of subordinate legislation.<sup>44</sup> In other words, the CCF must establish that the

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<sup>43</sup> *Appulonappa*, at para 81 (BOA, Tab 8).

<sup>44</sup> *Auer v Auer*, 2024 SCC 36 ("*Auer*") at para 26 (BOA, Tab 1).

Proclamation prohibiting entry to all of the “woods” in all of the province does not fall within a reasonable interpretation of the Minister’s statutory authority under s. 25(1) of the *Act*. This is not an examination of the reasonableness of the policy merits of the Proclamation, or whether it is “necessary, wise, or effective in practice”.<sup>45</sup>

86. Instead, the Court should use the principles of statutory interpretation to evaluate the language of the relevant provision, consistent with the text, context and purpose of the governing statutory scheme.<sup>46</sup> The CCF has set out its position on the purpose and meaning of s. 25(1) above, in the discussion on overbreadth.
87. A closer textual reading of s. 25(1) is necessary for the *vires* analysis. The section permits the Minister to designate a “restricted travel zone in any area of the woods”. The CCF submits that the Minister’s power under s. 25(1) of the *Forests Act* was never intended to be exercised to restrict entry to any “woods” across the entire province, or even any broad geographical subset of land that included “woods” and “not-woods”.
88. Instead, the plain language of the provision clearly indicates that the Minister may issue a proclamation where there is an area within the woods for which it is necessary to restrict travel, for the protection of those woods. This is materially different from restricting travel to any place that qualifies as woods within all areas.
89. It would have been perfectly intelligible and rational for the Minister to set physical boundaries of recognizable “woods” within which travel was restricted, rather than

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<sup>45</sup> *Ibid*, at para 56.

<sup>46</sup> *Auer*, at para 62, 64 (BOA, Tab 1).

declare all land in the province that fall under the broad and vague criteria of “woods” to be off limits.

90. Further, the Minister’s unreasonable interpretation of his power under s. 25(1) also resulting in issues of vagueness and overbreadth, rendering the Proclamation unconstitutional.

**C. The Minister failed to engage in proportionate balancing of *Charter* rights/values**

91. The CCF submits that the Minister’s decision to issue the Proclamation was unreasonable because it failed to proportionately balance *Charter* rights and values engaged by a prohibition on all travel into the woods in all counties in Nova Scotia.
92. When issuing the Proclamation pursuant to s. 25(1) of the *Forests Act*, the Minister was exercising a discretionary statutory decision-making power. In doing so, he was required to properly balance the *Charter* rights and values raised by the decision to issue the Proclamation, with the statutory objectives of his power under the *Act*.<sup>47</sup> The standard of review of a discretionary decision which limits *Charter* rights and values is reasonableness.<sup>48</sup>
93. As a preliminary issue, the Minister was required to consider whether the Proclamation engaged the *Charter* by either directly infringing or limiting a protected right, or by engaging a value underlying one or more *Charter* rights.<sup>49</sup> The CCF is

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<sup>47</sup> *Doré v Barreau du Québec*, 2012 SCC 12, at para 55-58 (BOA, Tab 5); *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31, at para 60-73 (BOA, Tab 4).

<sup>48</sup> *Commission scolaire*, at para 60, (BOA, Tab 4).

<sup>49</sup> *Commission scolaire* at para 64, (BOA, Tab 4); *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32 at para 57 (BOA, Tab 6)

not required to establish that a *Charter* right was breached by the Proclamation to demonstrate that this analysis was required of the Minister.

94. Then, the Minister was required to engage in a balancing exercise by (a) considering the statutory objectives of the travel ban power under the *Forests Act*, and (b) ask how the *Charter* values at issue would best be protected in view of the statutory objectives. In order for the Minister's decision to be reasonable, it must have proportionately balanced the *Charter* protections at play with his statutory mandate.<sup>50</sup> As explained in *Loyola*, "a proportionate balancing is one that gives effect, as fully as possible to the *Charter* protections at stake given the particular statutory mandate".<sup>51</sup>
95. It should have been apparent to the Minister that the wide-reaching impact of the Proclamation engaged multiple different *Charter* rights and values.
96. Most obviously, the Proclamation applied to Mi'kmaq people in Nova Scotia, and had the potential to infringe on aboriginal and treaty rights guaranteed by s. 35 of the *Constitution Act, 1982*, to the extent that those rights were exercised by access to or through any land characterized as "woods" under the *Forests Act*. There is no evidence of any consideration by the Minister or his staff in the record of decision of the impact of the Proclamation on Indigenous rights.

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<sup>50</sup> *Doré* at para 55-58 (BOA, Tab 5); *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12 ("*Loyola*") at para 37 (BOA, Tab 7).

<sup>51</sup> *Loyola*, at para 39, (BOA, Tab 7).

97. The Proclamation has the effect of widely restricting the movement and activities of all persons in Nova Scotia into or through any area which could be considered “woods” under the *Forests Act*, engaging the rights and values of free movement within Canada guaranteed by s. 6 of the *Charter*.<sup>52</sup>
98. The Proclamation raised foreseeable differential impacts on individuals based on their personal characteristics, including protected characteristics such as disability, age, religion or race, engaging rights and values under s. 15 of the *Charter*.
99. As argued by Mr. Evely, the Proclamation may also have engaged the individual s. 7 *Charter* rights of individuals whose rights to life or security of the person were impacted by the Proclamation.
100. The record of the Minister’s decision demonstrates absolutely no consideration of the impacts of the Proclamation on the *Charter* or constitutional rights of Nova Scotians.
101. The Decision Request does not identify or consider the question of whether the Proclamation represents a proportionate balancing of the Minister’s statutory objectives with the *Charter* right and values that it engages. Instead, the Decision Request identifies only potential impact on business interests which may be affected by restricted access to the woods. Indeed, the decision to issue permits was intended to address the potential economic impact of the Proclamation, without any regard to individual rights and freedoms.

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<sup>52</sup> *Taylor v. Newfoundland and Labrador*, 2026 SCC 5 at para 64-49 (BOA, Tab 14).

102. The CCF submits that the Minister's failure to give any consideration to the *Charter* rights and values engaged by restricting all persons from entering the "woods" renders the decision unreasonable.

## V. ORDER SOUGHT

103. The CCF's application for judicial review was filed at a time when the Proclamation was still in force, on August 15, 2025. The Proclamation expired at the end of the 2025 fire season on October 15, 2025, before the application could be heard. The object of this application is therefore to guide future exercises of the Minister's discretion, as the Proclamation under challenge is no longer in force.

104. The CCF requests that the Court declare that the Minister's Proclamation was unreasonable on the basis that:

- a. it constituted a restriction on liberty contrary to the principles of fundamental justice, violating s. 7 of the *Charter*;
- b. it was an *ultra vires* exercise of the Minister's power under s. 25(1) of the *Forests Act*; and
- c. issued without proportionate balancing of its impact on *Charter* rights and values.

105. The CCF request that the Court grant its application for judicial review, with costs.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 26<sup>th</sup> DAY OF FEBRUARY, 2026.**



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Sheree L. Conlon, KC

Counsel for the applicant  
Canadian Constitution Foundation



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Nasha Nijhawan

Counsel for the applicant  
Canadian Constitution Foundation

## APPENDIX A – LIST OF CITATIONS

1.	<i>Auer v. Auer</i> , 2024 SCC 36
2.	<i>Canada (Attorney General) v. Bedford</i> , 2013 SCC 72
3.	<i>Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)</i> , 2004 SCC 4
4.	<i>Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)</i> , 2023 SCC 31
5.	<i>Doré v. Barreau du Québec</i> , 2012 SCC 12
6.	<i>Law Society of British Columbia v. Trinity Western University</i> , 2018 SCC 32
7.	<i>Loyola High School v. Quebec (Attorney General)</i> , 2015 SCC 12
8.	<i>R. v. Appulonappa</i> , 2015 SCC 59
9.	<i>R v Khawaja</i> , 2012 SCC 69
10.	<i>R. v. Levkovic</i> , 2013 SCC 25
11.	<i>R. v. Moriarity</i> , 2015 SCC 55
12.	<i>R. v. Nova Scotia Pharmaceutical Society</i> , [1992] 2 SCR
13.	<i>R. v. Vaillancourt</i> , [1987] 2 SCR
14.	<i>Taylor v. Newfoundland and Labrador</i> , 2026 SCC 5
15.	<i>Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)</i> , 2017 BCCA 324

## APPENDIX B – STATUTES AND REGULATIONS

*Forests Act*, R.S.N.S. 1989, c. 179 (BOA, Tab 16)

*Forest Fire Protection Regulations*, NS Reg 135/2019 (BOA, Tab 17)

*Summary Proceedings Act*, R.S. N.S. 1989, c. 450 (BOA, Tab 18)

*Summary Offence Tickets Regulations*, N.S. Reg. 281/2011:

### Schedule 12 Forests Act

	<b>Offence</b>	<b>Section</b>	<b>Out of Court Settlement</b>
1	<i>Selling, offering for sale or giving nursery stock</i>	11(4)	\$180.00
2	<i>City or incorporated town (specify) failing to take reasonable steps to extinguish fire within its boundaries</i>	22(2)	NIL
3	<i>Igniting, maintaining or making use of open fire or causing open fire to be ignited, maintained or used when open fire is not permitted under regulations</i>	23(3)	\$28 872.50
4	<b>[repealed]</b>		
5	<b>[repealed]</b>		
6	<b>[repealed]</b>		
7	<b>[repealed]</b>		
8	<i>Igniting, maintaining or making use of open fire or causing open fire to be ignited, maintained or used when fire proclamation is in effect</i>	24(2)	\$28 872.50
9	<i>Entering woods without forest travel permit when travel proclamation is in effect</i>	25(1)	\$28 872.50
9A	<i>Entering watercourse used by aircraft for fire-suppression operations or impeding fire-operation efforts (specify)</i>	26(1A)	\$28 872.50
10	<i>Refusing to provide fire suppression equipment when requisitioned</i>	26(3)	\$28 872.50
11	<i>Failing to report fire</i>	26(4)	\$28 872.50
12	<i>Dropping burning substance during fire season</i>	27(1)	\$28 872.50
13	<i>Failing to take reasonable effort to prevent spread of open fire or leaving open fire unattended (specify)</i>	27(2)	\$28 872.50

14	<i>Igniting open fire or causing open fire to be ignited on privately owned land without permission of owner or occupier</i>	27(3)	\$28 872.50
15	<i>Failing to provide and maintain fire fighting equipment at place of forestry operation</i>	27(4)	\$28 872.50
16	<i>Operating spark emitting outlet without adequate device for arresting sparks</i>	27(5)	\$237.50
17	<i>Refuelling equipment before it has cooled to a point where it is unlikely to start a fire or leaving uncooled equipment in a place where it is likely to start a fire (specify)</i>	27(6)	\$180.00
18	<i>Storing or transporting flammable substance in container not approved by Canadian Standards Association</i>	27(7)	\$180.00
19	<i>Failing to inform group entering woods of fire protection provisions outlined in the Forests Act and regulations</i>	27(8)	\$180.00
20	<i>Failing to clear burning site of flammable debris for distance of at least 100 ft. or other distance required (specify)</i>	28(1)	\$180.00
21	<i>Owner or operator of wood processing facility leaving open fire unattended</i>	28(2)	\$28 872.50
22	<i>Person in charge of burning operation failing to take immediate action to control and extinguish open fire at site of operation</i>	28(3)	\$28 872.50
23	<i>Person in charge of burning operation failing to report fire to Department</i>	28(4)	\$28 872.50
24	<i>Failing to remove fire hazard when directed by conservation officer</i>	29(3)	\$237.50
25	<i>Owner or occupier of land leaving slash, brush or flammable material within boundaries of public highway or 50 ft. thereof for longer than 10 days</i>	30(1)	\$237.50
26	<i>Failing to dispose of debris to satisfaction of conservation officer</i>	30(3)	\$237.50
27	<i>Failing to dispose of debris in accordance with burning permit</i>	30(3)	\$28 872.50
28	<i>Railway failing to comply with order, rule or direction respecting prevention and control of fires</i>	31	NIL
29	<i>Removing sign or notice posted by Department</i>	33	\$237.50
30	<i>Obstructing conservation officer or person assisting conservation officer</i>	35	NIL